



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

v.

MICHAEL L. JONES,

Defendant.

ID No. 9911016309

**ORDER ON MOTIONS FOR POSTCONVICTION RELIEF  
AND MOTION FOR APPOINTMENT OF COUNSEL**

**AND NOW TO WIT**, this 30th day of January, 2019, upon consideration of Defendant's Third and Fourth Motions for Postconviction Relief<sup>1</sup> and Motion for Appointment of Counsel, **IT APPEARS THAT:**

1. On January 27, 2005, a jury found Michael Jones ("Jones") guilty of fifteen felonies, including multiple murder charges.<sup>2</sup> Jones was sentenced on September 16, 2005.<sup>3</sup>

2. Jones filed an appeal of his conviction on October 12, 2005.<sup>4</sup> The Delaware Supreme Court remanded the appeal for an evidentiary hearing which the Court held on June 5, 2007.<sup>5</sup> Following the hearing, the Court, on July 3, 2007,

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<sup>1</sup> This Judge recently re-assigned these motions to herself. After reviewing the file, the Court determined the motions are ripe for decision and the Court requires no further filings in order to render a decision.

<sup>2</sup> Case No. 9911016309, Superior Court Criminal Docket No. 102. Further references to the docket will be as "D.I. \_\_\_\_."

<sup>3</sup> D.I. 162.

<sup>4</sup> D.I. 166.

<sup>5</sup> D.I. 211.

issued its ruling.<sup>6</sup> The Supreme Court affirmed Jones' conviction on December 12, 2007 and issued its Mandate on January 3, 2008.<sup>7</sup>

3. Thereafter, Jones, on May 21, 2008, filed a pro se motion for postconviction relief (the "First Postconviction Motion") under Superior Court Criminal Rule 61.<sup>8</sup> On May 30, 2008, the Superior Court Judge assigned to oversee the Court's conflict program appointed counsel ("Rule 61 Counsel") to represent Jones in connection with the First Postconviction Motion.<sup>9</sup>

4. Notwithstanding that appointment, the Superior Court Judge who presided over Jones' trial, and was assigned to the First Postconviction Motion, does not appear to have provided notice of the appointment of Rule 61 Counsel. Thus, Jones presented the First Postconviction Motion to the Court without the assistance of counsel. Without waiting for briefing or argument, the assigned Superior Court Judge denied the First Postconviction Motion on September 3, 2008.<sup>10</sup>

5. On October 23, 2008, Rule 61 Counsel filed and prosecuted an appeal of the Court's decision on the First Postconviction Motion.<sup>11</sup> The Delaware Supreme

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<sup>6</sup> D.I. 215.

<sup>7</sup> D.I. 220.

<sup>8</sup> D.I. 225.

<sup>9</sup> D.I. 227.

<sup>10</sup> *State v. Jones*, I.D. No. 9911016309, 2008 WL 4173816 (Del. Super., Sept. 3, 2008), D.I. 234.

<sup>11</sup> D.I. 237.

Court, after briefing and oral argument, affirmed the Court's decision on the First Postconviction Motion.<sup>12</sup>

6. Next, Jones sought relief in the Federal Courts by filing a writ of *habeas corpus* in the United States District Court for the District of Delaware which the District Court denied.<sup>13</sup> Jones appealed that denial to the United States Court of Appeals for the Third Circuit. After granting Jones' application for an appeal on three issues, the Third Circuit appointed counsel to represent Jones on the appeal.<sup>14</sup> On January 30, 2015, after receiving briefing on the issues, the Third Circuit denied the appeal.<sup>15</sup>

7. Jones then moved to be resentenced pursuant to 11 *Del. C.* § 4204A and 4209A and Superior Court Criminal Rules of Procedure 35A, following the United States Supreme Court's decision in *Miller v. Alabama*<sup>16</sup>. The Court granted Jones' request for appointment of counsel.<sup>17</sup> On June 30, 2014, the Court held a sentencing hearing wherein the Court resentenced Jones to three life sentences for the Murder First Degree convictions.<sup>18</sup> No appeal was taken from this resentencing.

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<sup>12</sup> *Jones v. State*, 968 A.2d 492 (table), 2009 WL 595574 (Del. 2009), D.I. 237.

<sup>13</sup> *State v. Jones*, I.D. No. 9911016309, 2016 WL 7338591, at \*3 (Del. Super. Dec. 16, 2016). D.I. 296.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

<sup>16</sup> 567 U.S. 460 (2012).

<sup>17</sup> D.I. 246.

<sup>18</sup> D.I. 251.

8. On June 23, 2015, Jones, through his counsel, filed a Motion for Postconviction Relief (the “Second Postconviction Motion”)<sup>19</sup> and an Amended Opening Brief in support of the Second Postconviction Motion<sup>20</sup>. Thereafter, the State filed a Motion for Summary Dismissal<sup>21</sup> to which Jones filed a Response<sup>22</sup> and an Amended Response<sup>23</sup>. The State filed a Reply.<sup>24</sup> The Court heard oral argument on May 16, 2016.<sup>25</sup>

9. The Court decided Jones’ Second Postconviction Motion under Criminal Rule 61 which was effective June 1, 2015.<sup>26</sup> Under this version of Criminal Rule 61, Jones must overcome four procedural bars to obtain postconviction relief:

- a. (1) bars the filing of a motion in excess of one year of the final judgment of conviction;
- b. (2) bars successive motions unless the motion satisfies the pleading requirements of Rule 61(d)(2)(i) or (d)(2)(ii);

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<sup>19</sup> D.I. 259.

<sup>20</sup> D.I. 275.

<sup>21</sup> D.I. 280.

<sup>22</sup> D.I. 284.

<sup>23</sup> D.I. 288.

<sup>24</sup> D.I. 289.

<sup>25</sup> D.I. 291.

<sup>26</sup> *State v. Jones*, I.D. No. 9911016309, 2016 WL 7338591, at \*4 (Del. Super. Dec. 16, 2016). D.I. 296.

- c. (3) bars consideration of non-asserted claims unless Defendant shows “cause for relief from the procedural default” and “prejudice from violation of movant’s rights”;
- d. (4) bars any ground for relief which was previously adjudicated, including proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding or in a federal habeas corpus proceeding.<sup>27</sup>

10. The bars set forth in Criminal Rule 61(i)1-4 are not applicable “to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of [Criminal Rule 61]”.<sup>28</sup>

11. With regard to preliminary consideration of second or subsequent postconviction motions under to Criminal Rule 61(d)(2), the motion shall be summarily dismissed, unless the movant was convicted after a trial and the motion either:

- (i) pleads with particularity that new evidence exists that creates a strong inference that the movant is actually innocent in fact of the acts underlying the charges of which he was convicted; or

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<sup>27</sup> Superior Court Criminal Rule 61(i)1-4.

<sup>28</sup> Superior Court Criminal Rule 61(i) 5.

- (ii) pleads with particularity that a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant's case and renders the conviction or death sentence invalid.<sup>29</sup>

12. On December 16, 2016, the Court held that Jones' Second Postconviction Motion "was procedurally barred and should be summarily dismissed."<sup>30</sup>

13. Jones filed a Third Postconviction Motion<sup>31</sup> on July 19, 2018 and a Fourth Postconviction Motion<sup>32</sup> on September 17, 2018. Additionally, he filed a Motion for Appointment of Counsel on October 1, 2018.<sup>33</sup>

14. In the Third Postconviction Motion, Jones raises various arguments that his appointed counsel who handled his re-sentencing was ineffective because appointed counsel failed to appeal the re-sentencing and failed to timely file a Rule 61 motion regarding the re-sentencing. Jones also asserts that "the felony murder conviction should be vacated because the evidence shows the murder was not in furtherance of Robbery first degree." He further asserts that his trial counsel was ineffective by failing to "properly investigate evidence demonstrating [his]

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<sup>29</sup> Superior Court Criminal Rule 61(d)(2).

<sup>30</sup> *State v. Jones*, I.D. No. 9911016309, 2016 WL 7338591, at \*8 (Del. Super. Dec. 16, 2016). D.I. 296.

<sup>31</sup> D.I. 302.

<sup>32</sup> D.I. 307.

<sup>33</sup> D.I. 308.

innocence” and was “ineffective during trial and in direct appeal.” Last, Jones argues the “[r]e-sentencing was disproportionate to the other juvenile re-sentencings under 11 *Del. C.* 4204A and 4209A.”

15. In the Fourth Postconviction Motion, Jones reiterates the same allegations as set forth in his Third Postconviction Motion with the addition of a new claim that his counsel was ineffective for failing to conduct a “survey of all re-sentenced juveniles to show the disparity between their reduced sentences and the defendants essentially unchanged sentence.”

16. In support of Jones’ Motion to Appoint Counsel to Assist with Postconviction Motion (“Appointment Motion”)<sup>34</sup>, he states that he requires assistance because he is missing the paperwork necessary to support his claim due to his transfer to another correction facility out of state after the February 2017 disturbance in C-building. Additionally, Jones asserts that the law library where he is currently housed only contains Pennsylvania law and no Delaware rules of any kind to assist him. Finally, Jones claims that due to the seriousness of the case, counsel has been appointed in the past. Jones fails to offer any details in support of his Appointment Motion.

17. Before the Court may address the merits of Jones’ Third and Fourth Postconviction Motions, it must analyze the procedural bars of Superior Court Rule

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<sup>34</sup> D.I. 308 – Motion for Appointment of Counsel.

61(i).<sup>35</sup> If one or more of the procedural bars applies, the Court will not proceed to consider the merits of Jones' postconviction motions.<sup>36</sup>

18. Jones' Third and Fourth Postconviction Motions are procedurally barred as successive and failing to satisfy Criminal Rule 61(d)(2). All grounds for postconviction relief must be stated in the first postconviction motion, and that subsequent motions may only include matters unable to be addressed by appeal or previous motions for postconviction relief.<sup>37</sup>

19. While Jones did not have Rule 61 Counsel assist in the filing of his First Postconviction Motion, he did have that Counsel assist with his appeal of the Court's decision on his First Postconviction Motion wherein the Supreme Court affirmed the Superior Court's decision on the First Postconviction Motion.<sup>38</sup> Moreover, Jones did have counsel assist him with his Second Postconviction Motion which the Court found was procedurally barred and summarily dismissed.<sup>39</sup>

20. Jones' Third and Fourth Postconviction Motions are almost word-for-word identical to his Second Postconviction Motion which the Court found to be

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<sup>35</sup> *State v. Brathwaite*, 2014 WL 4352170, at \*2 (Del. Super. Aug. 29, 2014), *aff'd* (113 A.3d 1080 (Del. 2015)).

<sup>36</sup> *Id.*

<sup>37</sup> Criminal Rule 61(i)(2); *See also Younger v. State*, 580 A.2d 552, 554-44 (Del. 1990).

<sup>38</sup> *Jones v. State*, 968 A.2d 492 (table), 2009 WL 595574 (Del. 2009), D.I. 237.

<sup>39</sup> *State v. Jones*, I.D. No. 9911016309, 2016 WL 7338591, at \*8 (Del. Super. Dec. 16, 2016). D.I. 296.



procedurally barred and summarily dismissed. Thus, Jones' postconviction claims have been fully addressed by the Court not once but twice.

21. Jones does not plead with particularity that new evidence creates a strong inference that he is innocent or that a new rule of constitutional law applies retroactively to invalidate his sentence. Jones' restating or attempting to reframe the claims does not change the fact that the arguments have been considered by the Court and dismissed.<sup>40</sup>

22. Finally, as to Jones' Motion for Appointment of Counsel, it is procedurally barred as repetitive. Additionally, Jones asserts only conclusory statements that he needs counsel. His assertion fails to show good cause because it lacks factual support and fails to provide a legally viable argument.

WHEREFORE, Jones' Third and Fourth Motions for Postconviction Relief are **SUMMARILY DISMISSED** and Jones' Motion for Appointment of Counsel is **DENIED**.

**IT IS SO ORDERED.**



Janice L. Jurden, President Judge

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<sup>40</sup> *State v. Brathwaite*, 2014 WL 4352170, at \*2 (Del. Super. Aug. 29, 2014), *aff'd* (113 A.3d 1080 (Del. 2015)).